UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK
--X
DAVID WILLIAMS, on behalf of himself and all others similarly situated,

Docket No.: 15-CV-5610

Plaintiffs,

- against -

COMPLAINT AND DEMAND FOR JURY TRIAL

EPIC SECURITY CORP.,

Defendants.
--X

Plaintiff David Williams, on behalf of himself and all others similarly situated, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff was a security officer who drove to his assigned worksite ("security officer driver") and brings this case on behalf of current and former security officer drivers who were employees of Defendant Epic Security Corp. ("Epic") and were not paid minimum, spread of hours and overtime wages in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq* and the New York Labor Law ("NYLL") Article 6 § 190 et seq., New York Labor Law Article 12 and its supporting regulations 12 N.Y.C.R.R. 142-2.2. Defendant's actions were willful and with reckless disregard to the rights of Plaintiff and the class he seeks to represent.

2. Plaintiff was employed as a security officer driver by Epic and worked doing security work and driving co-workers in a company vehicle to and from Epic's headquarters in Manhattan to his assigned jobsite in Far Rockaway, New York.

3. This action is brought to recover unpaid overtime wages and spread of hour wages

owed to Plaintiff and other similarly situated employees of Epic, as well as injunctive and declaratory relief against Defendant due to its willful and unlawful actions, attorneys' fees, interest and costs.

4. Plaintiff brings this action on behalf of himself and all similarly situated current and former employees of Epic who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*. and specifically the collective action provision of the FLSA, 20 U.S.C. § 216(b), to remedy violations of the wage and hour provisions of the FLSA by Epic that deprived Plaintiff and others similarly situated of their lawful wages.

5. Plaintiff also brings this action on behalf of himself and a class of similarly situated current and former employees of Epic, pursuant to Fed. R. Civ. P. 23, for unpaid wages, including but not limited to, unpaid overtime wages for their hours in excess of forty per week, and their unpaid spread of hour wages for their hours worked in excess of ten in a day, pursuant to the New York Labor Law Article 6 § 190 et seq., New York Labor Law Article 12 and its supporting regulations 12 N.Y.C.R.R. 142-2.2 and 142-2.4.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's federal claims under the FLSA pursuant to 29 U.S.C. § 216(b).

7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(a) as the Plaintiff and putative class members performed work within this district.

8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§

2201 and 2202.

CLASS ALLEGATIONS

9. Plaintiff brings his FLSA claims on behalf of himself and all similarly situated persons who work or have worked for Epic as security officer drivers in New York and who did not receive overtime pay for all hours worked in excess of forty in the work week. (The "FLSA Class.")

10. Defendant Epic is liable under the FLSA for, inter alia, failing to properly compensate Plaintiff and the putative class, and as such, notice should be sent to the FLSA Class. There are numerous similarly situated current and former employees of Defendant who have been similarly underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join.

11. Plaintiff brings New York Labor Law claims on his behalf and on behalf of a class of persons under Rule 23 of the Federal Rules of Civil Procedure consisting of all current and former employees of Epic who worked as security officer drivers and who failed to receive statutorily-required compensation for all hours worked and/or all statutorily required overtime pay for hours worked in excess of 40 in the work week. ("Overtime Rule 23 Class").

12. The persons in the classes identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is presently unknown to Plaintiff, and calculation of such number would require facts in the sole control of Defendant, upon information and belief, there are more than 50 members of the class during the class period.

13. The claims of the Plaintiff are typical of the claims of the Rule 23 Class.

14. Plaintiff will fairly and adequately protect the interests of the Rule 23 Class.

15. A class action is superior to other available methods for the fair and efficient adjudication of the controversy - particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant like Epic. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendant's common and uniform policies, practices and procedures. Although the relative damages suffered by individual class members are not de minimus, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

16. Defendant has acted on grounds generally applicable to the Rule 23 Class, thereby making declaratory relief appropriate for the class.

17. There are questions of law and fact common to the class which predominate over any questions solely affecting individual members of the class, including, but not limited to:

a. whether Epic failed to keep true and accurate time records for all hours worked by Plaintiff and the Rule 23 Class;

b. what proof of hours worked is sufficient where an employer like Epic fails in its duty to maintain true and accurate time records;

c. whether Defendant Epic failed to compensate Plaintiff and the Rule 23 Class for all the work that it required and permitted them to perform;

d. whether Defendant Epic failed to pay Plaintiff and the Rule 23 Class overtime wages at a wage rate of one and one-half times their regular rate of pay within the meaning of the New York Labor Law Article 12 and the supporting New York State Department of Labor Regulations, 12 NYCRR 142-2.2; and,

e. whether Epic's failure to pay Plaintiff and the Rule 23 Class was willful under the FLSA.

PARTIES

18. Plaintiff David Williams is an adult individual and a resident of the County of Queens in the City and State of New York.

19. At all times relevant to this complaint, Plaintiff was an employee of Epic within the meaning of the FLSA, 29 USC § 203(e), New York Labor Law Article 6 § 190(2) and New York City Administrative Code § 6-109a (15).

20. Defendant Epic is a Delaware corporation with its headquarters and principal office located at 2067 Broadway, New York, New York. Purportedly owned and operated by Mark J. Lerner, Ph.D., Steven F. Goldman and Selwyn Falk, it claims to be New York and New Jersey's top security service. Epic has annual gross volume of sales of $500,000 or more and, as it does work and provides security services in New Jersey, handles goods, items and services that are moved in interstate commerce.

FACTUAL ALLEGATIONS

21. At all relevant times, Defendant employed the Plaintiff and the other members of the class.

22. Upon Plaintiff's hire, Defendant provided him a one page printed document with Epic work related information contained on both sides. On the front side, marked "Security Officer Directions to Worksite," the document contained Plaintiff's work schedule. On the back

side, marked "Uniformed Security Officer Work Regulations," the document contained a multitude of company orders and instructions demanding the compliance of Plaintiff and the other members of the class upon penalty of termination. Among the regulations was an instruction to "Bring food/drink" and a warning that "Failure to comply with any or all company regulations may result in loss of pay or disciplinary action up [to] and including termination."

23. This one page document is identified by Epic as Form P-65 and has been in use since at least January 2007. Upon information and belief, Defendant provides this document, Form P-65 to all its security officer drivers.

24. Defendant provided Plaintiff and the class members with an Epic uniform that they were required to wear while on the job.

25. As security officer drivers, Plaintiff and the class members were required to report to: Defendant's Manhattan headquarters at 71st Street and Broadway one to two hours before their shift started; pick up a marked Epic SUV from a local parking garage; pick up a co-worker(s); and drive from Manhattan to the job site, in Plaintiff's instance, Daytop Village in Far Rockaway, New York.

26. Upon arrival at the job site, Plaintiff and the class members performed general security work consisting of patrolling and identification and control of disturbances, breach of the peace, fire and obstructions.

27. Defendant's regulations required Plaintiff and the class members to telephone or radio Epic's dispatcher within five minutes of reporting to the job site and do the same at the end of the shift upon departure from the job site.

28. Defendant's regulations required Plaintiff and the class members to sign an

attendance sheet only upon their arrival to and departure from the job site.

29. After signing out and calling the job site at the end of their shift, Plaintiff and the class members were required to drop colleague(s) at their home(s), fill up the Epic SUV with gasoline and return it to the local Manhattan parking garage.

30. Plaintiff and the class members worked five eight hour shifts per week for a total of 40 hours per week. They were paid approximately $10 per hour for each hour worked.

31. Plaintiff and the class members worked an additional 3-4 hours per day picking up the Epic SUV, picking up work colleagues, driving to and from the job site, filling up the gas tank and parking the SUV and were not paid their hourly rate for this work.

32. Plaintiff's and class members' work as security officer drivers was an integral part of Epic's business.

33. As part of its regular business practice, Defendant Epic intentionally, willfully and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA and the New York Labor Law. This pattern of practice includes but is not limited to willfully failing to pay Plaintiff and the class members one and one half times their regular rate of pay for hours worked in excess of forty per work week.

34. Upon information and belief, Defendant's unlawful conduct as described herein is pursuant to a policy or practice of attempting to minimize labor costs by violating the FLSA and the New York Labor Law.

35. Defendant's unlawful conduct has been widespread, repeated and consistent. Defendant has failed to maintain and preserve accurate payroll records and violated the New York Labor Law Sec. 195 and 12 N.Y.C.R.R. 142.6(a)(4).

36. Throughout the course of their employment with Defendant, Plaintiff and the class members regularly worked over forty hours in a week. None ever received time and a half for the hours worked over forty in a week.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT
Brought on Behalf of Plaintiff and the FLSA Class Members Against Defendant

37. Plaintiff alleges and incorporates by reference the allegations contained in each of the above paragraphs.

38. Defendant Epic has engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Complaint.

39. At all times relevant to this action, Plaintiff and the class members were employed by Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e).

40. At all times relevant to this action, Plaintiff and the class members were engaged in commerce and Defendant was an enterprise engaged in commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

41. Defendant willfully failed to pay Plaintiff and the class members overtime compensation at a rate not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of the Fair Labor Standards Act, 29 U.S.C.A. § 207(a)(1).

42. Defendant failed to keep appropriate and accurate payroll and time records as required by federal law.

43. Due to Defendant's FLSA violations, Plaintiff and the FLSA class have been

deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
NEW YORK LABOR LAW: UNPAID OVERTIME WAGES
Brought on Behalf of Plaintiff and all Class Members Against Defendant

44. Plaintiff alleges and incorporates by reference the allegations contained in the above paragraphs.

45. At all times relevant to this action, Plaintiff and the putative class were employed by Defendant Epic within the meaning of New York Labor Law Article 6 § 190(2).

46. Defendant willfully violated the rights of Plaintiff and the class members by failing to pay them overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek in violation of the New York Minimum Wage Act (New York Labor Law Article 12) and its regulations, N.Y.C.R.R. Sec. 142-2.2.

47. Defendant willfully violated the rights of Plaintiff and the class members by failing to pay them wages due and owing for work performed in violation of the New York State Labor Law.

48. Due to Defendant's New York Labor Law violations, Plaintiff and the class members are entitled to recover from Defendant their unpaid overtime premium wages, reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, liquidated damages, and other compensatory and equitable relief pursuant to New York Labor

Law Article 6 § 190 et seq., and Article 19, § 650 et seq.

THIRD CAUSE OF ACTION
(NEW YORK LABOR LAW: SPREAD OF HOUR WAGES)
Brought on Behalf of Plaintiff and all Class Members Against Defendant

49. Plaintiff alleges and incorporates by reference the allegations contained in the above paragraphs.

50. At all times relevant to this action, Plaintiff and the putative class were employed by Defendant Epic within the meaning of New York Labor Law Article 6 § 190(2).

51. Defendant willfully violated the rights of Plaintiff and the class members by failing to pay them an additional hour's pay at at least the basic minimum hourly wage rate for any and all days in which they worked in excess of 10 hours per day in violation of the New York Minimum Wage Act (New York Labor Law Article 12) and its regulations, N.Y.C.R.R. Sec. 142-2.4.

52. Defendant willfully violated the rights of Plaintiff and the class members by failing to pay them spread of hour wages due and owing for work performed in violation of the New York State Labor Law.

53. Due to Defendant's New York Labor Law violations, Plaintiff and the class members are entitled to recover from Defendant their unpaid spread of hour wages, reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, liquidated damages, and other compensatory and equitable relief pursuant to New York Labor Law Article 6 § 190 et seq., and Article 19, § 650 et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for the following relief:

a. That, at the earliest possible time, Plaintiff be permitted to give notice of this collective action, or that the court issue such notice to all persons who are presently, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendants as security officer drivers. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;

b. Unpaid wages (including but not limited to overtime and spread of hours), attorneys' fees, costs, and interest pursuant to 29 U.S.C. § 201 et seq., New York Labor Law Article 6 § 1981-a, and New York Administrative Code §6-109e (2).

c. An additional and equal amount of unpaid wages as liquidated damages pursuant to 29 U.S.C. § 201 et seq. for unpaid wages from three years prior to the filing of this complaint to the present;

d. An additional and equal amount of unpaid wages as liquidated damages pursuant to New York Labor Law Article 6 § (The New York Wage Theft Prevention Act);

e. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of

Civil Procedure;

f. Designation of the individual Plaintiff as representative of the Class, and counsel of record as Class Counsel; and

g. Issuance of a declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York State Labor Law.

DEMAND FOR TRIAL BY JURY

Pursuant to FRCP 38(b), Plaintiff demands a trial by jury on all questions of fact raised by the Complaint.

Dated: New York, New York
July 17, 2015

Respectfully submitted,

By: ______________________

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